

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF the City of Seattle

These Comments are filed by the City of Seattle in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA") and the Washington Association of Telecommunications Officers and Advisors ("WATOA"). Like NATOA and WATOA, Seattle believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community. The facts established herein clearly demonstrate that local governments are not a barrier to the deployment and provision of cable services. Further we believe that these facts support our contention that local government franchising is essential for ensuring that last mile cable communications systems, which occupy valuable public property paid for by our citizens, respond to important local needs and interests.

Cable Franchising in Our Community

Seattle is located in the State of Washington on Puget Sound, 113 miles (182 km) from the US-Canadian border. Seattle is the commercial, cultural and advanced technology hub of the US Pacific Northwest and a major port city for trans-Pacific and Scandinavia/European travel and trade. Seattle's 84 square miles housed a 2005 population of 573,000 with a population density of 6821 people/sq. mi. Our franchised cable providers are Comcast Corporation and Millennium Digital Media (MDM). Our community has negotiated cable franchises since 1955. Cable service in Seattle has a penetration rate of approximately sixty seven percent.

Our Current Franchises

Comcast currently serves approximately 155,000 cable subscribers. Comcast facilities are built out throughout Seattle except for a relatively small area known as the Central District franchise area, which is served by MDM. Our current franchise with Comcast was originally awarded to TCI on January 20, 1996 and expired on January 20, 2006. Comcast and the City recently reached agreement on a new ten-year franchise through the informal process outlined in the Federal Cable Act. Actual negotiations were concluded in about eight months. Our City Council is expected to approve the franchise in March of this year.

MDM is a small cable operator and serves approximately 18,000 subscribers in Seattle. It holds two franchises in Seattle. In addition to its original franchise in the Central District franchise area, in 1996 MDM was awarded a competitive franchise to overbuild part of the territory served by TCI. Our current franchises with MDM expire on March 1, 2008. MDM has notified the City that it wishes to renew its franchises and the City is currently in the process of ascertaining its community needs and interests and conducting a performance review, as per the renewal provisions outlined in the Federal Cable Act. We expect to begin negotiations with MDM later this year.

Among the provisions in our franchises:

1. Franchise Fee: Our current franchises include provisions that respond to community needs and interests and protect cable subscribers. Cable operators are required to pay a franchise fee to the City in the amount of 3.5 % of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

2. Public, Educational and Government (PEG) channels: We require cable operators to provide capacity for public, educational, and governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; five channels devoted to educational access; and one channel devoted to government access. Seattle citizens would be harmed by any diminution of the City's ability to require PEG channels that meet the needs and interests of our community.

3. In a recent survey¹ Seattle residents expressed their support for local non commercial programming such as that provided through our PEG channels. In regards to public access, 81% of respondents said they think it is important or very important for residents and organizations to have access to SCAN, the City's Public

¹ Information Technology Indicators Residential Survey-<http://seattle.gov/tech/indicators/2004residentialsurvey.htm>

Access channel. Up until now Comcast had willingly provided financial support for the public access operations. Since Comcast has been steadfast in its insistence that it will no longer provide operations support for public access, the City has decided to fund public access operations from franchise fees revenues. Comcast also provides the public access facility. Government and educational operations funding is provided by the City and the respective educational institutions. Comcast will provide capital grants for equipment purchases. None of our franchises contain requirements for institutional networks ("I-Net")

4. Emergency alerts: Our franchise contains emergency alert requirements which provide a critical avenue of communication with our residents in the event of an emergency.

5. Complementary cable service to schools and government buildings

6. Customer service obligations: Seattle has adopted the Cable Customer Bill of Rights (CCBOR)² to ensure that cable operators provide quality service to our residents. We believe that as a result our citizens enjoy some of the best customer service in the country.

The Franchising Process in Seattle

The franchising process in Seattle is very straightforward. A competitive provider would submit an application³ for a franchise which contains information such as:

- Name and address of the applicant;
- A detailed statement of the proposed plan of operation of the applicant;
- A detailed description of all previous experience of the applicant or the owners of the applicant in providing cable communications; and
- A detailed and complete recent financial statement

The information provided in the application allows the City to evaluate the technical, financial and legal qualifications of the applicant. Staff from the City's Office of Cable Communications are available to assist the applicant in completing the application requirement but usually applicants submit the information without the need for staff assistance. After the application is complete Cable Office staff issue a report to the Council and begin franchise negotiations. Once negotiations are completed legislation is forwarded to the City Council and at least one public hearing must be conducted before Council can act on legislation granting a franchise.

Competitive Cable Systems

² http://www.seattle.gov/cable/2001_Bill_of_Rights.htm

³ See SMC 21.60.220 for more detailed description of application requirements

At the request of MDM, in 1996 Seattle granted a competitive franchise to overbuild approximately half of Seattle and compete with the then incumbent TCI. Unfortunately MDM eventually experienced financial problems and could not meet its buildout obligations. In 2003 the City and MDM renegotiated MDM's competitive franchise to reduce its buildout obligation and to provide MDM flexibility to expand its cable system in response to market demand and when a more favorable investment climate emerged. As this shows, Seattle has demonstrated that we can work effectively with providers in response in a few months to changing conditions.

Agreements can be reached very quickly when an applicant agrees to substantially match the incumbents' franchise, taking into account the number of subscribers and other mitigating factors. In 2000 Seattle was simultaneously engaged in negotiations with three competitive providers seeking franchises: Western Integrated Networks (WIN), RCN Corporation ("RCN") and Wide Open West ("WOW"). Over a period of five months we negotiated in good faith with all prospective entrants. Unfortunately, RCN and WOW eventually backed out of negotiations citing financial constraints. We reached a franchise agreement with WIN in December, after only four months of negotiations and they were awarded a franchise in February of 2001. WIN eventually filed for bankruptcy protection before building any facilities in Seattle. We should note that because of the City's desire to bring competition to Seattle we devoted four staff persons to the ongoing negotiations with the three prospective providers. Additionally, our municipal electric utility, Seattle City Light, spent significant resources engineering innovative solutions for accommodating three new sets of wires on the their utility poles.

Recently the City received an inquiry from Qwest regarding a franchise and the City has indicated to Qwest that we welcome them and will be flexible in granting a franchise. Qwest has yet to submit an application despite receiving a very positive response but we hope to hear from them soon. We look forward to assisting Qwest in securing a franchise.

We note that to date no applicant for a franchise has ever been denied the opportunity to serve in our community. In addition the City is actively pursuing competitive providers.

Conclusions

The local cable franchising process functions well in Seattle. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Seattle therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Seattle

By: Tony Perez, director
Seattle Office of Cable

Communications

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov